

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2194

AN ACT

AMENDING TITLE 13, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 46; AMENDING SECTION 26-102, ARIZONA REVISED STATUTES; AMENDING TITLE 26, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 26-103; AMENDING SECTIONS 41-619.51, 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; RELATING TO MILITARY SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 13, Arizona Revised Statutes, is amended by adding  
3 chapter 46, to read:

4 CHAPTER 46

5 MILITARY RESERVATIONS AND FACILITIES SECURITY

6 13-5001. Definitions

7 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "ENTER" MEANS THE INTRUSION OF ANY PART OF ANY INSTRUMENT OR ANY  
9 PART OF A PERSON'S BODY INSIDE OF A MILITARY RESERVATION OR FACILITY OR A  
10 STRUCTURE OR FENCED YARD OF A MILITARY RESERVATION OR FACILITY.

11 2. "ENTERING OR REMAINING UNLAWFULLY" MEANS AN ACT BY A PERSON WHO  
12 ENTERS OR REMAINS IN OR ON A MILITARY RESERVATION OR FACILITY OR A STRUCTURE  
13 OR FENCED YARD OF A MILITARY RESERVATION OR FACILITY IF THAT PERSON'S INTENT  
14 FOR ENTERING OR REMAINING IS NOT AUTHORIZED OR OTHERWISE PRIVILEGED.

15 3. "MILITARY RESERVATION OR FACILITY" MEANS ANY LAND OR FACILITY THAT  
16 IS OWNED OR LEASED BY OR DESIGNATED TO THE ARIZONA NATIONAL GUARD.

17 4. "STRUCTURE OR FENCED YARD" MEANS ANY STRUCTURE, FENCED YARD, WALL,  
18 BUILDING OR OTHER SIMILAR BARRIER OR ANY COMBINATION OF STRUCTURES, FENCED  
19 YARDS, WALLS, BUILDINGS OR OTHER BARRIERS THAT SURROUNDS A MILITARY  
20 RESERVATION OR FACILITY AND THAT IS POSTED WITH SIGNAGE INDICATING IT IS A  
21 FELONY TO TRESPASS.

22 13-5002. Criminal trespass on military reservations and  
23 facilities; classification

24 A. A PERSON COMMITS CRIMINAL TRESPASS ON A MILITARY RESERVATION OR  
25 FACILITY BY KNOWINGLY ENTERING OR REMAINING UNLAWFULLY WITHIN A STRUCTURE OR  
26 FENCED YARD OF A MILITARY RESERVATION OR FACILITY.

27 B. CRIMINAL TRESPASS ON A MILITARY RESERVATION OR FACILITY IS A CLASS  
28 6 FELONY.

29 Sec. 2. Section 26-102, Arizona Revised Statutes, is amended to read:

30 26-102. Powers and duties of the adjutant general

31 A. The adjutant general shall serve as head of the department. The  
32 governor as commander in chief shall administer and control the national  
33 guard, and the adjutant general is responsible to the governor for execution  
34 of all orders relating to the militia, organization, activation,  
35 reactivation, inactivation and allocation of units, recruiting of personnel,  
36 public relations and discipline and training of the national guard and those  
37 members of the militia inducted into the service of this state as provided in  
38 this chapter. The adjutant general shall act as military chief of staff to  
39 the governor and chief of all branches of the militia. The adjutant general  
40 may belong to the national association and other organizations for the  
41 betterment of the national guard, subscribe to and obtain periodicals,  
42 literature and magazines of such other organizations and pay dues and charges  
43 from monies of this state appropriated for that purpose. Except for the  
44 authority expressly reserved for the governor, the adjutant general is

1 responsible for emergency management and all emergency activities are subject  
2 to the approval of the adjutant general.

3 B. The adjutant general, as the military chief of staff, shall:

4 1. Act as military advisor to the governor and perform, as the  
5 governor prescribes, military duties not otherwise designated by law.

6 2. Adopt methods of administration for the national guard that are not  
7 inconsistent with laws and regulations of the United States department of  
8 defense or any subdivision of the United States department of defense.

9 3. Supervise and direct the organization, regulation, instruction and  
10 other activities of the national guard.

11 4. Attest and record all commissions issued by the governor and  
12 maintain a register of all commissioned personnel.

13 5. Keep a record of all orders and regulations pertaining to the  
14 national guard and all other writings and papers relating to reports and  
15 returns of units comprising the national guard and militia.

16 6. Superintend the preparation of returns, plans and estimates  
17 required by this state, by the department of the army, air force or navy and  
18 by the secretary of defense.

19 7. Control the use of and care for, preserve and maintain all military  
20 property belonging to or issued to this state and pay from monies  
21 appropriated by the legislature for these purposes the necessary expenses for  
22 labor and material incurred in the repair of military property.

23 8. Dispose of unserviceable military property belonging to this state,  
24 account for the proceeds and transmit them to the morale, welfare and  
25 recreational fund established by section 26-153.

26 9. Authenticate with the seal of the office of the adjutant general  
27 all orders and copies of orders issued by the adjutant general's office. An  
28 authenticated copy has the same force and effect as the original.

29 10. Present to the governor before each regular session of the  
30 legislature, or as otherwise required, an estimate of the financial  
31 requirements for state monies for operation of the department and the  
32 national guard during the next fiscal year.

33 C. The adjutant general, as head of the department, shall:

34 1. Be the administrator of the department.

35 2. Coordinate the functions of the divisions and offices of the  
36 department.

37 3. Appoint, suspend, demote, promote or dismiss employees of the  
38 department who are subject to title 41, chapter 4, article 5 and employees  
39 who are exempt from state personnel administration. The adjutant general may  
40 delegate this authority.

41 4. Appoint an auditor for the department to conduct periodic financial  
42 and compliance audits of each division and office in the department and  
43 perform such other duties as prescribed by law. At least annually the  
44 auditor shall audit accounts that are open for more than twelve months. The

1 auditor shall determine within the department compliance with purchase and  
2 bidding procedures prescribed by law.

3 5. Adopt, with the approval of the governor, rules necessary for the  
4 operation of the department.

5 6. Establish and administer accounts for federal, state or other  
6 monies made available to carry out the functions of the department.

7 7. As deemed necessary, appoint to peace officer status members of the  
8 Arizona national guard who have been awarded a United States army military  
9 occupational specialty as military policeman or a United States air force  
10 specialty code as security policeman. ~~Prior to~~ BEFORE appointment as peace  
11 officers, such individuals must successfully complete a course of study to be  
12 prescribed by the Arizona peace officer standards and training board.  
13 Individuals appointed as peace officers pursuant to this section, when  
14 performing duties at facilities or on land operated or controlled by or under  
15 the jurisdiction of the adjutant general, have all the powers, privileges and  
16 immunities of peace officers provided by law. Individuals appointed as peace  
17 officers pursuant to this section are not eligible to participate in funding  
18 provided by the peace officers' training fund established by section 41-1825  
19 or in the public safety personnel retirement system.

20 8. Establish, abolish or reorganize the positions or organizational  
21 structure within the department, subject to legislative appropriation, if, in  
22 the adjutant general's judgment, the modification would make the operation of  
23 the department more efficient, effective or economical.

24 9. Establish an educational program for persons who have previously  
25 dropped out of high school and who are under twenty years of age but who are  
26 not adjudicated delinquent. The educational program shall be designated  
27 "project challenge", and the program shall be conducted by the national guard  
28 of Arizona in a paramilitary environment. The goal of the educational  
29 program is to provide persons enrolled in the program with the knowledge and  
30 skills necessary to become productive citizens and to obtain a general  
31 equivalency diploma. In addition to monies appropriated for the program, the  
32 adjutant general may accept and spend monies from any other lawful public or  
33 private source. ~~Each employee of the program who has contact with a program~~  
34 ~~participant must have a valid fingerprint clearance card issued pursuant to~~  
35 ~~title 41, chapter 12, article 3.1 or provide to the department documentation~~  
36 ~~of the person's application for a fingerprint clearance card. The employee~~  
37 ~~must certify on forms that are provided by the department and that are~~  
38 ~~notarized whether the employee is awaiting trial on or has ever been~~  
39 ~~convicted of any of the criminal offenses listed in section 41-1758.03,~~  
40 ~~subsections B and C in this state or similar offenses in another state or~~  
41 ~~jurisdiction. If a person who is hired by the department as a project~~  
42 ~~challenge worker does not have a fingerprint clearance card at the time of~~  
43 ~~employment, the person must apply for a fingerprint clearance card on or~~  
44 ~~before the seventh day following the date the person was hired.~~

1        10. Submit to the governor annually by October 1 a report for the  
2 department including the strength and condition of the national guard, the  
3 business transactions of the department, a detailed statement of expenditures  
4 for all military and civilian purposes and the disposition of all military  
5 and civilian property on hand or issued.

6        D. The adjutant general, with the approval of the governor, may:

7        1. Enter into contracts with individuals, this state, political  
8 subdivisions of this state or the federal government and its agencies for the  
9 purchase, acquisition, rental or lease of lands, buildings or military  
10 materiel and take title in the name of this state for the establishment and  
11 maintenance of armories, subject to legislative appropriation for these  
12 purposes.

13        2. Procure and contract for procurement of equipment and its issuance  
14 to members of the militia inducted into the service of this state.

15        3. Enter into agreements and plans with the state universities,  
16 community colleges or any educational institution supported by federal or  
17 state monies for promotion of the best interests of the national guard and  
18 military training of students of the institutions.

19        4. Lease property acquired under this chapter for any public purpose  
20 for a period of one year that is renewable.

21        5. Convey for any public purpose in the name of this state easements  
22 on real property acquired under this chapter.

23        6. Enter into contracts or agreements with the federal government that  
24 are deemed to be in the best interest of this state and the national guard.

25        7. Delegate the powers and duties in this section.

26        8. ADOPT METHODS OF SECURITY FOR THE NATIONAL GUARD RESERVATIONS OR  
27 FACILITIES THAT ARE CONSISTENT WITH THE LAWS, REGULATIONS OR DIRECTIVES OF  
28 THE UNITED STATES DEPARTMENT OF DEFENSE OR ANY SUBDIVISION OF THE UNITED  
29 STATES DEPARTMENT OF DEFENSE AND THE LAWS OF THIS STATE.

30        Sec. 3. Title 26, chapter 1, article 1, Arizona Revised Statutes, is  
31 amended by adding section 26-103, to read:

32        26-103. Department of emergency and military affairs  
33        employees; fingerprints; exemptions; definition

34        A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, EMPLOYEES SHALL  
35 SUBMIT THE FORM PRESCRIBED IN SUBSECTION C OF THIS SECTION TO THE DEPARTMENT  
36 AND SHALL HAVE A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE  
37 41, CHAPTER 12, ARTICLE 3.1 OR SHALL APPLY FOR A FINGERPRINT CLEARANCE CARD  
38 WITHIN SEVEN WORKING DAYS OF EMPLOYMENT.

39        B. A MEMBER OF THE NATIONAL GUARD WHO HAS RECEIVED SECURITY CLEARANCE  
40 PURSUANT TO NATIONAL GUARD LAWS AND REGULATIONS, EXCEPT FOR A GENERAL OFFICER  
41 WHO IS AN EMPLOYEE OF THE DEPARTMENT, IS EXEMPT FROM THE FINGERPRINTING  
42 REQUIREMENTS OF SUBSECTION A OF THIS SECTION.

43        C. AN EMPLOYEE SHALL CERTIFY ON A FORM THAT IS PROVIDED BY THE  
44 DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS AND NOTARIZED THAT THE EMPLOYEE  
45 IS NOT AWAITING TRIAL ON OR HAS NEVER BEEN CONVICTED OF OR ADMITTED IN OPEN

1 COURT OR PURSUANT TO A PLEA AGREEMENT COMMITTING ANY OF THE OFFENSES LISTED  
2 IN SECTION 41-1758.03, SUBSECTIONS B AND C IN THIS STATE OR A SIMILAR OFFENSE  
3 IN ANOTHER STATE OR JURISDICTION.

4 D. THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS SHALL NOT ALLOW A  
5 PERSON TO BE EMPLOYED ON ANY NATIONAL GUARD RESERVATION OR FACILITY IN ANY  
6 CAPACITY IF THE PERSON HAS BEEN DENIED A FINGERPRINT CLEARANCE CARD PURSUANT  
7 TO TITLE 41, CHAPTER 12, ARTICLE 3.1 OR HAS NOT RECEIVED AN INTERIM APPROVAL  
8 FROM THE BOARD OF FINGERPRINTING PURSUANT TO SECTION 41-619.55, SUBSECTION I.

9 E. FOR THE PURPOSES OF THIS SECTION, "EMPLOYEE" MEANS ANY PERSON WHO  
10 WORKS FOR THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS OR ANY SUBDIVISION  
11 OF THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS, INCLUDING PROJECT  
12 CHALLENGE.

13 Sec. 4. Section 41-619.51, Arizona Revised Statutes, is amended to  
14 read:

15 41-619.51. Definitions

16 In this article, unless the context otherwise requires:

17 1. "Agency" means the supreme court, the department of economic  
18 security, the department of education, the department of health services, the  
19 department of juvenile corrections, the department of emergency and military  
20 affairs or the board of examiners of nursing care institution administrators  
21 and assisted living facility managers.

22 2. "Board" means the board of fingerprinting.

23 3. "Expedited review" means an examination, in accordance with board  
24 rule, of the documents an applicant submits by the board or its hearing  
25 officer without the applicant being present.

26 4. "Good cause exception" means the issuance of a fingerprint  
27 clearance card to an employee pursuant to section 41-619.55.

28 5. "Person" means a person who is required to be fingerprinted  
29 pursuant to any of the following:

- 30 (a) Section 8-105.
- 31 (b) Section 8-322.
- 32 (c) Section 8-509.
- 33 (d) Section 8-802.
- 34 (e) Section 15-183.
- 35 (f) Section 15-534.
- 36 (g) Section 15-1330.
- 37 (h) Section 15-1881.
- 38 (i) Section ~~26-102~~ 26-103.
- 39 (j) Section 36-411.
- 40 (k) Section 36-425.03.
- 41 (l) Section 36-446.04.
- 42 (m) Section 36-594.01.
- 43 (n) Section 36-594.02.
- 44 (o) Section 36-882.
- 45 (p) Section 36-883.02.

- 1 (q) Section 36-897.01.
- 2 (r) Section 36-897.03.
- 3 (s) Section 36-3008.
- 4 (t) Section 41-1964.
- 5 (u) Section 41-1967.01.
- 6 (v) Section 41-1968.
- 7 (w) Section 41-1969.
- 8 (x) Section 41-2814.
- 9 (y) Section 46-141, subsection A.
- 10 (z) Section 46-321.

11 Sec. 5. Section 41-1758, Arizona Revised Statutes, is amended to read:  
12 41-1758. Definitions

13 In this article, unless the context otherwise requires:

14 1. "Agency" means the supreme court, the department of economic  
15 security, the department of education, the department of health services, the  
16 department of juvenile corrections, the department of emergency and military  
17 affairs or the board of examiners of nursing care institution administrators  
18 and assisted living facility managers.

19 2. "Division" means the fingerprinting division in the department of  
20 public safety.

21 3. "Good cause exception" means the issuance of a fingerprint  
22 clearance card to an employee pursuant to section 41-619.55.

23 4. "Person" means a person who is required to be fingerprinted  
24 pursuant to any of the following:

- 25 (a) Section 8-105.
- 26 (b) Section 8-322.
- 27 (c) Section 8-509.
- 28 (d) Section 8-802.
- 29 (e) Section 15-183.
- 30 (f) Section 15-534.
- 31 (g) Section 15-1330.
- 32 (h) Section 15-1881.
- 33 (i) Section ~~26-102~~ 26-103.
- 34 (j) Section 36-411.
- 35 (k) Section 36-425.03.
- 36 (l) Section 36-446.04.
- 37 (m) Section 36-594.01.
- 38 (n) Section 36-594.02.
- 39 (o) Section 36-882.
- 40 (p) Section 36-883.02.
- 41 (q) Section 36-897.01.
- 42 (r) Section 36-897.03.
- 43 (s) Section 36-3008.
- 44 (t) Section 41-1964.
- 45 (u) Section 41-1967.01.

1 (v) Section 41-1968.

2 (w) Section 41-1969.

3 (x) Section 41-2814.

4 (y) Section 46-141, subsection A.

5 (z) Section 46-321.

6 5. "Vulnerable adult" has the same meaning prescribed in section  
7 13-3623.

8 Sec. 6. Section 41-1758.01, Arizona Revised Statutes, is amended to  
9 read:

10 41-1758.01. Fingerprinting division; duties

11 The fingerprinting division is established in the department of public  
12 safety and shall:

13 1. Conduct fingerprint background checks for persons and applicants  
14 who are seeking employment with licensees, contract providers and state  
15 agencies or seeking employment or educational opportunities with agencies  
16 that require fingerprint background checks pursuant to sections 8-105, 8-322,  
17 8-509, 8-802, 15-183, 15-534, 15-1330, 15-1881, ~~26-102~~ 26-103, 36-411,  
18 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01,  
19 36-897.03, 36-3008, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814,  
20 section 46-141, subsection A and section 46-321.

21 2. Issue fingerprint clearance cards. On issuance, a fingerprint  
22 clearance card becomes the personal property of the cardholder and the  
23 cardholder shall retain possession of the fingerprint clearance card.

24 3. On submission of an application for a fingerprint clearance card,  
25 collect the fees established by the board of fingerprinting pursuant to  
26 section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the  
27 monies collected in the board of fingerprinting fund.

28 4. Inform in writing each person who submits fingerprints for a  
29 fingerprint background check of the person's right to petition the board of  
30 fingerprinting for a good cause exception pursuant to section 41-1758.03.

31 5. Administer and enforce this article.

32 Sec. 7. Department of emergency and military affairs;  
33 employees; fingerprint clearance cards; current  
34 workers

35 Notwithstanding section 26-103, subsection A, Arizona Revised Statutes,  
36 as added by this act, the department of emergency and military affairs may  
37 continue to employ an employee who was hired before the effective date of  
38 this act and who does not have a fingerprint clearance card if the employee  
39 submits an application for a fingerprint clearance card within sixty days  
40 after the effective date of this act and the application is not denied.

41 Sec. 8. Emergency

42 This act is an emergency measure that is necessary to preserve the  
43 public peace, health or safety and is operative immediately as provided by  
44 law.